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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,245	03/02/2004	Wolfgang Held	028987.53209US	9893

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EXAMINER

NGUYEN, TU MINH

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,245

Applicant(s)

HELD ET AL.

Examiner

Tu M. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 030204.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because on line 2 of the claim, "the triggerable" should read --a triggerable--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyagi (U.S. Patent 4,100,735).

Re claims 1 and 5, as shown in Figures 1 and 4, Miyagi discloses a vehicle exhaust system and a method of triggering exhaust flaps in said exhaust system, the system comprising:

- triggerable exhaust flaps (30, 36, 37, 38),
- a vacuum storage device (50) operatively connected via a nonreturn valve (72) to an intake system (8) and to an exhaust system (3) via a triggerable solenoid valve (30) in parallel therewith, and
- a plurality of engine characteristics maps stored in an engine control unit (22) for triggering the triggerable solenoid valve (30) to open and close the exhaust flaps as a function

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of at least one stored engine characteristics map which includes the rotational speed, engine load and the engaged gear (see Figures 4, lines 31-43 of column 2, and line 60 of column 5 to line 2 of column 6).

Re claims 2, 3, and 6, in the method and system of Miyagi, an appropriate one of the engine characteristics maps is selected in the control unit from the stored engine characteristics maps depending on a preselectable requirement (Figures 4A and 4B show the relationships between the time T and the displacement H of the valve body (38) under low engine load and high engine load conditions, respectively).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyagi as applied to claims 3 and 6, respectively, above.

The method and system of Miyagi disclose the invention as cited above, however, fail to disclose that the selected appropriate engine characteristics map is configured to provide a switch between operation of the vehicle as a street vehicle and as a racecar.

As shown in Figures 4A and 4B, Miyagi opens or closes the exhaust flaps based on an engine load. It is obvious to one with ordinary skill in the art that a vehicle operating under a

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low engine load condition is being driven at a relatively low speed on a city street; and that a vehicle operating under a high engine load condition is being driven at a relatively high speed on a racing circuit.

Prior Art

6. The IDS (PTO-1449) filed on March 2, 2004 has been considered. An initialized copy is attached hereto.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of five patents: Hartel (U.S. Patent 3,931,710), Bockelmann et al. (U.S. Patent 4,000,615), Bockelmann et al. (U.S. Patent 4,058,978), Kubota (U.S. Patent 4,464,896), and Zimmer et al. (U.S. Patent 6,250,073) further disclose a state of the art.

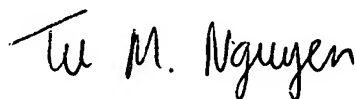
Communication

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (571) 272-4862.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TMN

Tu M. Nguyen

January 6, 2006

Primary Examiner

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